

**December 21, 2005
MINUTES**

**Recharge Advisory Subcommittee
To the
Natural Resources Interim Committee**

**Meeting Date - December 14, 2005
Burley Inn, 800 N. Overland, Burley, Idaho**

Those in attendance included advisory group members, Senator Don Burtenshaw and Representative Dell Raybould, Co-chairs of the Natural Resources Interim Committee; Gary Lemmon, Thousand Springs Water Users; Dan McFaddan, Lower Snake River Aquifer Recharge District; Lynn Carlquist, North Snake Ground Water District; Dean Stevenson, Magic Valley Ground Water District; Ted Diehl, North Side Canal Company; Lynn Harmon, American Falls Recharge District #2; Dan Temple, A & B Irrigation District; Jerry Rigby, Idaho Water Resource Board; and Don Hale, Committee of Nine. Additional attendees included Senator Stanley Williams; Hal Anderson, David Blew and Brian Patton, Idaho Department of Water Resources; Clive Strong, Natural Resources Division, Idaho Attorney General's Office; Doug Howard, Idaho Department of Environmental Quality; William Hazen, University of Idaho; Lynn Tominaga, Idaho Ground Water Appropriators; Dick Rush, Idaho Association of Commerce and Industry; Mike Bens, U.S. Bureau of Reclamation; Albert Lockwood, North Side Canal Company and Committee of Nine; and Katharine Gerrity, Legislative Services Office.

Rep. Raybould called the meeting to order at 10:00 a.m. with some general opening remarks before addressing the first agenda item of a proposed office of recharge management, as recommended by the advisory subcommittee to the full committee during its October meeting.

Rep. Raybould also reminded members that the recommendation suggested the office could potentially be placed under the direction of the Idaho Water Resource Board. He stated that the group would need to determine whether this proposal is something it would like presented to the Legislature. He also noted that he understands a draft budget proposal has been prepared and asked **Mr. Dan McFaddan** if he would review the proposal with the group.

Mr. McFaddan indicated that the advisory group's budget proposal at this stage is very general in nature and includes amounts for two personnel, contracted services, travel, support personnel, office space and legal support. Personnel costs were estimated at \$160,000 for two positions where the first position would concentrate on establishing and managing recharge sites and the second position would work on the problems associated with using canals for recharge. The proposal sets forth the amount of \$100,000 for contracted services that they believe would involve contracting for engineer/hydrologist services. Travel expenses in the amount of \$10,000

were projected for staff members and clerical support staff costs of \$35,000 were projected. Office space costs were estimated at \$12 to \$15 per sq. foot for a total of \$3,750. Costs for legal support were projected at \$50,000. In all, projected start up costs total \$348,000. **Mr. McFaddan** noted that in Arizona all of the support jobs are also done through contracted consultants. He stated that the group would like to get a program started so they could potentially do something this spring. He said it may be too late, but they would like to try to take advantage of any water that might become available.

Representative Raybould noted that he thinks people would like to talk about what the mission statement of such an office would be and how it would go about accomplishing any job description that isn't already being done by the Department of Water Resources.

Mr. Jerry Rigby, Idaho Water Resource Board, responded to update the group regarding the Board's activity since the discussions began. He noted that the issue seems to be whether there is an appropriate entity for such an organization to fit into. He continued by saying the Water Resource Board has been mentioned on numerous occasions as a potential facilitator. **Mr. Rigby** said that he believes the Board is such an entity. He noted that other states have organizations that are funded that are job statement particular for issues such as recharge. He went on to say that Idaho's Board is not funded or organized to the extent of other states and so if the Board were to facilitate such an organization, absent Legislative help, it would be an unfunded mandate. He recalled that the Board has changed since originally enacted. The Board at this time, he said, does not have its own staff or director as it did originally. **Mr. Rigby** continued that the Board has to rely on the Department and its staff that are assigned to assist the Board. Therefore, he said, to empower an organization such as the one proposed, short of simply having an ad hoc unfunded commission under the Board, which is a possibility, would require a Legislative fix. Although he noted that an official vote has not been taken, **Mr. Rigby** said that he believes the Board is unanimous in considering itself the appropriate entity and in its interest in playing any role to make this work.

Rep. Raybould asked in the event the Board took over the responsibility of recharge would it be statewide effort to which **Mr. Rigby** responded that it would.

Rep. Raybould asked whether such an arrangement would supercede having recharge districts.

Mr. Rigby said that he does not see that now. He went on to say that the state has an unused resource in the Board because of its funding limitations. He said that he hopes the Board would be viewed as the most likely candidate to be the facilitator of such an organization.

Mr. Don Hale indicated that it seems logical to him to build on the efforts of the Board to get something started given its expertise and ability.

Rep. Raybould told the group that if any request is going to be presented to the Legislature they have to have a solid outline of the goals and responsibilities of such an entity.

Senator Burtenshaw said that the first question is where are they going to get the water given the obstacles they have faced including winter water savings.

Mr. Hale commented that, in the past, their problem as individual districts, has been in dealing with other entities like the Bureau of Reclamation without the support of the state or the necessary expertise. If a state entity like the Board was involved, he said it might make the process easier.

Mr. Stevenson added that last year ground water districts leased some water and found out what a difficult process it was given the hurdles. He said that the Board may be able to overcome those hurdles.

Mr. Rigby said that at this time even the Board doesn't have the authority and there would have to be a Legislative fix. He added, however, as an entity it would be better suited and there would be more of a willingness to work together rather than with individuals alone.

Mr. Carlquist commented that there has to be political will to get things done. He said that because the Board is a statewide entity, it would be easier to get something put together for the Legislature rather than originating with ground water districts alone.

Rep. Raybould asked whether the advisory subcommittee would support a proposal from the Board to the Legislature to form a management authority and to submit a budget.

Mr. McFaddan responded that he doesn't think there is any question about it. He went on to add that what they have isn't working. He continued by saying that he has been with the Lower Snake Aquifer Recharge District for 30 years. He noted that they haven't been able to enlarge the district and when they make an assessment, they don't get enough funds together to do what they need to do. He added that another problem is that there is no coordination between them and canal companies or ground water districts. He said that recharge is too complicated and important to operate like they did in the 19th century.

Rep. Raybould asked whether **Mr. Rigby** or **Mr. Strong** have access to personnel that could help the Board put together a proposal.

Mr. Rigby said that access to staff would require **Director Dreher's** approval. He added that he believes the Department is very willing and capable. **Mr. Hal Anderson** explained that it is the job of those assigned to support the Board to do so, and in that role they would work with the Board.

Senator Burtenshaw asked **Mr. Strong** whether he thought there would be any opposition. **Mr. Strong** responded, in his opinion, in terms of the general concept he didn't think so, but in terms of implementation there may well be from Idaho Power Company and from the Bureau of Reclamation. He said there is also the possibility of some concern by environmental and wildlife management entities or groups. **Mr. Strong** went on to say that, in his opinion, in the past they

have been too fractured, too constrained, and without deadlines. He said that to get a project off the ground they need to have deadlines. He said that they may not know from the beginning where the water will come from but they have to get started if they want to pursue a project. He added that in terms of water quality concerns, he believes if the state is involved they can work with DEQ regarding monitoring.

Mr. Strong went on to comment about a number of statutory sections which provide that when recharge is being done, recharge water rights are secondary to perfected water rights. He said that is established law. However, he continued, the statutes then provide that those rights for power purposes will also be treated as senior rights even though they were subordinated by the Swan Falls Agreement. He went on to add that there are varying perspectives relating to the interpretation of the subordination provisions of the Agreement. **Mr. Strong** also noted that they will have to deal with the interpretation of winter water savings with the Bureau of Reclamation.

Rep. Raybould moved on to the second agenda item, a discussion regarding the availability of long term recharge water. He asked Department personnel to address the amount of water necessary to keep the aquifer in equilibrium and **Senator Burtenshaw** asked whether there was any water available above Idaho Power's 17,250 right. **Mr. David Blew** responded that modeling shows the amount above that right is about 28,000 to 30,000 af per year which is only ten percent of what is necessary to keep the aquifer in equilibrium.

Mr. Hale commented that if the group is organized under the Board it will give them more opportunity to negotiate with Idaho Power and the Bureau.

Rep. Raybould referred to the language of the statute in contrast to the Swan Falls Agreement. **Mr. Strong** indicated that if the statute was modified there likely would be a taking issue and then it would come down to a matter of contract interpretation. He reiterated that, in his opinion, there wasn't any constraint on the subordination that was provided relating to Idaho Power's water rights and that the only impediment is now statutory language. He added that is not the position of Idaho Power.

Rep. Raybould commented that Idaho Power is an Idaho company and you have to honor its position in that it has shareholders and a bottom line. He said the power company, as well as this group, have interests for which they are looking out.

Mr. Hale said that statewide projects need to be identified and other people have to be involved.

Rep. Raybould stated that citizens of the state have to be educated as to the precarious position the state is getting into with the loss of the aquifer. He said that many municipalities have no idea about the situation that they face.

Mr. Stevenson agreed that there are many places throughout the state facing water issues due to growth. Many cities do not understand that they could be curtailed. He said that, in his area, they have had municipalities now joining their ground water district.

Mr. Rigby said, in playing devil's advocate, they have to ask whether they have the cart before the horse. He said that some would say that the first thing to do is to fix the statutes to authorize them to proceed in the first place. After that, he said, some would be looking at where the water would be coming from, taking care of these impediments before creating an organization and throwing money at it.

Mr. McFaddan said that the public has to know that we are all in this together, certainly economically, and went on to note that the dairy industry alone in Jerome and Gooding counties produce a larger revenue stream than all other agriculture north of the Salmon river. He thinks that one of the weaknesses of the proposal is that they neglected the educational aspect.

Mr. Hale said the discussion reminded him of the day they met in the office of **Governor Kempthorne** with **Mr. John Keys** of the **Bureau of Reclamation** regarding the Nez Perce Agreement and he told the Governor that the day the adjudication ends there will be no economic development in the state that doesn't come at the expense of irrigated agriculture. He said they have to encourage the public to have economic development and agriculture in this state and the way they can do both is through recharge. He said he agrees with **Mr. Rigby** that they need to come up with a proposal for the ESPA, that they have the facilities in place today but just need to get the impediments removed.

Rep. Raybould said he thinks the Board will have more influence on the public. He added that the proposal should also address the critical issue of water in the state and what has to be done to get back on track. He said that we are getting in a situation where the expansion of the citizenry will be affected and it will slow down progression of the state as a whole, not only in terms of agriculture but also industry.

Mr. Dick Rush, Idaho Association of Commerce and Industry, said that the reason he attends the meetings is that business and industry know that water is the lifeblood of the state. IACI's position is that they strongly support recharge as long as it does not infringe on anyone's water right. He couldn't say what position they would take if there is an attempt to amend any statutes.

Mr. Strong told the group that the Hells Canyon relicensing process is now underway. He said that they are not close to settlement but that the very preliminary numbers suggest, based on the kinds of conditions imposed on the relicense of the project, that we are looking at annualized power rate increases of 8 to 10 percent. **Mr. Strong** went on to say that when they talk about taking water out for recharge they have to look at the rate issue as well. He said that there are many competing demands and they have to factor this into any proposal.

Rep. Raybould added that when he met recently with Bonneville Power he was told that at the present time its vulnerability for power shortages is less than one half of one percent which equates to a blackout once in a hundred years. However, BPA is now faced with decisions from a federal district court in Oregon relating to spill and these, along with environmental proposals to the court for future flow augmentation, would increase vulnerability to 7.5 percent, virtually guaranteeing blackouts. He added that it is not just Idaho Power but also others downstream that

could impact their ability to do recharge.

The next speakers were **Mr. David Blew** and **Mr. Brian Patton** from the **Department of Water Resources**. **Mr. Blew** provided the group with an update on the W-Canal project. He first reminded the group that the site is typical of the sites and may be better than many on the lower part of the ESPA because of potentially good soils. He added that the project is about trying to develop the technology for recharge on the ESPA.

Mr. Blew said they have completed the contract with the Idaho Department of Commerce that allocates the remaining \$81,948 of the ESPA mitigation grant funds to the W-Canal project. The Idaho Water Resource Board has agreed to be the project owner and has committed up to \$300,000 to the project from funds appropriated through HB392 (2005 Legislative Session). **Mr. Blew** said that they have contacted private landowners about easements for pipelines. He said there are two landowners and both are agreeable depending on conditions to work with them. He went on to say that the Department has finished surveys for a detailed topographic map and the Request for Proposal (RFP) for geotechnical work is drafted. He said that are currently in discussion with the Department of Administration to determine the extent of their involvement in the RFP and future phases of the project. They hope to issue the RFP in January and award the contract in February.

Mr. Blew continued that they are working with the USBR to complete NEPA documentation. They are required to do so because they are using some federal money for the project. The Bureau would like to have it completed by the end of April, 2006. He said they have met with USBR and FWS to discuss NEPA and ESA related issues and requirements. They have completed diversion analysis to the site based upon available water and canal capacity, spring response modeling and field review with the Bureau contractor for cultural clearance at the site.

Mr. Blew said they have met with the mayor of Wendell to inform him about the project. He said they continued discussions with the Department of Lands on required permits for geotechnical work and potential lease on the site. He added that they may have reached an agreement with DEQ on monitoring plans and they have completed a monitoring plan that contains most of the regional resource data that will be needed for the W-Canal site.

In conclusion, **Mr. Blew** outlined future activities. Those include:

- , Issue RFP for geotechnical studies - Jan. 06
- , Award contract for geotechnical studies - Feb. 06
- , Complete NEPA compliance - May 06
- , Have geotechnical studies completed - June 06
- , Final design completed by July 06
- , Complete contracts for easements on private land - July 06
- , Complete lease with the Dept. of Lands - July 06
- , Issue RFP for construction - August 06
- , Issue contract for construction - Sept 06

Complete construction by March 07

Mr. Blew said that in May of 2004 they developed an extensive plan and listed sites with a lengthy analysis of cost and water availability for three options. He said they need to update that plan but the costs are still relatively firm. He said that to do 170,000 af per year it would cost about \$700,000 a year.

Mr. Stevenson asked about injection wells. **Mr. Blew** responded that it always an option. He said that one of the concerns they have on the ESPA is interbeds and uncased wells where you could get water running laterally. He said that even if you recharge in sink holes you still have the concern with interbeds. He said that injection wells may become a possibility and that digging a two foot hole is really not that expensive. **Mr. Patton** added that another advantage of injection wells is you are a lot more flexible with location.

Mr. Rigby said, if the group desired, the Board would put forth a proposal and then present that to the co-chairs and let them decide how to proceed from there.

Rep. Raybould asked what kind of proposal the advisory subcommittee wants to make to the Board or to the Legislature. **Senator Burtenshaw** said that he believes if there is a consensus, they should try to promote the idea. A discussion followed.

Mr. McFadden moved that the concept presented in the group's recommendations to the interim committee, along with a detailed plan to be developed by the Water Resource Board, be presented to the appropriate Legislative committees and the Legislature.

Mr. Stevenson seconded the motion and the motion passed on a unanimous voice vote.

Rep. Raybould asked **Mr. Mike Bens** from the **Bureau of Reclamation** how much water there is this year. **Mr. Bens** responded that he doesn't know at this point in time but they are off to a good start. He said the snow pack is about the same as last year and reservoir storage is much better off, although still lower than average.

Mr. Lynn Tominaga suggested that ground water districts have to be more engaged. He said that it is not it is not a matter of support but if they are looking for ground water districts to come up with more money related to recharge he doesn't know if they can do so because they are under stress with the assessments they are paying now.

Mr. Carlquist responded that it would depend on how a plan fits into any mitigation projects. He said they have been involved in trying to do something - especially in 130, such as diversion projects and pipelines, but actual recharge has been a sticking point in terms of finding the water.

Senator Burtenshaw asked **Mr. Strong** to comment on the status of the Conservation Reserve Enhancement Program. **Mr. Strong** responded that the final proposal was submitted on December 2 and is now in the hands of the Department of Agriculture in D.C. He said Idaho's

congressional delegation is contacting the Department to urge expeditious handling. He also said that the environmental assessment is in draft form and that all the critical steps are in the final process. **Mr. Stevenson** said that he heard they might have a March sign-up and **Mr. Strong** said they hope for earlier than that.

Mr. McFaddan requested that the Lower Snake River Aquifer Recharge District's Position Statement be attached to the minutes and the co-chairs agreed to his request.

There was a general discussion regarding funding which was deemed premature.

Mr. McFaddan inquired as to the status of the any amount remaining out of \$1 million that was obtained for recharge by Water District 1 in approximately 1994. **Mr. Strong** responded that they have about \$130,000 left that could possibly be used as seed money. **Mr. Hale** said they would have to review the restrictions that came with the funds.

Mr. Hale moved to adjourn which was seconded by **Mr. McFaddan**. The meeting was adjourned at 12:15 p.m.